

TITLE 16
BUREAU OF AUTOMOTIVE REPAIR

**NOTICE OF PROPOSED REGULATORY ACTION AND PUBLIC
HEARING CONCERNING**

AB 2289 Penalties

SPECIFICALLY

Citations and Administrative Fines; Authority to Issue Citations and Administrative Fines;
Administrative Fine Amounts; Compliance with Citations/Orders of Abatement

NOTICE IS HEREBY GIVEN that the Department of Consumer Affairs/Bureau of Automotive Repair (Bureau or BAR) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the following location on the following date:

NORTHERN CALIFORNIA

Monday, December 5, 2011 at 2:00pm
Department of Consumer Affairs
Hearing Room
1625 North Market Blvd
Sacramento, California 95834

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be **received by the Bureau at its office no later than 5:00 p.m. on Monday, December 5, 2011**, or must be received by the Bureau at the above referenced hearing. **Comments sent to persons or addresses other than those specified under Contact Person, or received after the date and time specified above, regardless of the manner of transmission, will be included in the record of this proposed regulatory action, but will not be summarized or responded to.** The Bureau, upon its own motion or at the request of any interested party, may thereafter formally adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE:

Pursuant to the authority vested by section 44050 of the Health and Safety Code (H&S) and section 9882 of the Business and Professions Code (B&P), to implement, interpret or make specific H&S section 44050, the Bureau is proposing to adopt Article 11.1 of Chapter 1, Division 33, Title 16, to the California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

INTRODUCTION:

BAR was established within the Department of Consumer Affairs in 1972 with the enactment of the Automotive Repair Act¹. Senate Bill (SB) 51 (Beilenson, Chapter 1578, Statutes of 1971), mandated a statewide automotive repair consumer protection program. In furtherance of its mandate, BAR administers a statewide licensing and enforcement program.

BACKGROUND:

Through its statewide offices, BAR conducts consumer protection services related to Title 16, Division 33, of the California Code of Regulations. BAR regulates Automotive Repair Dealers, Lamp and Brake stations and adjusters, and Smog Check stations and technicians. BAR receives and mediates complaints from the public, investigates violations of the Automotive Repair Act, Smog Check laws, and associated regulations. When appropriate, cases are referred to the Attorney General's office or law enforcement authorities for administrative action, civil and/or criminal prosecution.

Assembly Bill (AB) 2289 (Eng, Chapter 258, Statutes of 2010) provided BAR broad authority to issue fines ranging anywhere from \$100 up to \$5,000. Additionally, AB 2289 required BAR to include a penalty schedule in regulation to specify fine amounts for specific violations. In assessing a fine amount H&S section 44050 requires BAR to consider the following criteria:

1. The nature, gravity, severity, and seriousness of the violation.
2. The persistence of the violation.
3. The good faith or willfulness of the violator.
4. The history of previous violations by that violator, including the commission of numerous and repeated violations.
5. The failure to perform work for which money was received.
6. The making of any false or misleading statement in order to induce a person to authorize repair work or pay money.
7. The failure to make restitution to consumers affected by the violation.
8. The extent to which the violator has mitigated or attempted to mitigate any damage or injury caused by the violation.
9. The degree of incompetence or negligence in the performance of duties and responsibilities.
10. The purposes and goals of this chapter and other matters as may be appropriate.

¹ Business and Professions Code § 9880, et seq.

To assist in the development of the proposed regulation BAR conducted two workshops to solicit public input. Recommendations to improve the regulation have been included in this proposal.

EFFECT OF REGULATORY ACTION:

BAR is proposing to adopt the following regulations:

- I. **Article 11.1 Citations and Administrative Fines, Chapter 1, Division 33, Title 16, California Code of Regulations:** Article 11.1 will be created to contain regulations specific to citations and administrative fines for Smog Check violations.
- II. **Authority to Issue Citations and Administrative Fines:** This section provides BAR the ability to issue citations to a licensee or contractor for violations of H&S section 44000 et seq. and regulations adopted pursuant thereto. (§3394.25)
- III. **Administrative Fine Amounts:** BAR may issue citations and administrative fines to any licensee or contractor, who has violated H&S 44000 et. seq. and regulations adopted pursuant thereto. Maximum fines for violations are listed in Table I, Administrative Fine Schedule. (§3394.26)
- IV. **Compliance with Citations/Orders of Abatement:** If the cited person who has been issued an order of abatement cannot complete the correction within the time set in the citation, due to uncontrollable factors and after reasonable diligence, the cited person may request an extension from BAR. The request for an extension must be in writing and within the time set in the citation. If the administrative fine is not paid, it will be added to the cited person's license or registration renewal fee. Licenses and registrations will not be renewed without the payment of the renewal fee and/or administrative fine(s). (§3394.27)

FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES AND COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE:

BAR anticipates collecting an additional \$2,065,000 in fines annually due to the implementation of this expanded fine authority. In addition, BAR projects that raising its maximum fine authority will result in an increase to the number of citation appeals; however, the increase in citation appeals heard by Office of Administrative Hearings (OAH) should be fully offset by the bill's addition of an informal appeals process within BAR. It is anticipated that the OAH appeal rate will remain constant and the proposed regulation will not result in any new costs to the state.

There are no costs/savings in federal funding to the state.

NONDISCRETIONARY COSTS/SAVINGS TO LOCAL AGENCIES:

None.

LOCAL MANDATE:

None.

COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH GOVERNMENT CODE SECTIONS 17500-17630 REQUIRES REIMBURSEMENT:

None.

BUSINESS IMPACT:

BAR has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Currently, BAR has the authority to fine Smog Check stations up to \$2,500 for violations of H&S section 44000 et. seq. and regulations adopted pursuant thereto. Raising the maximum fine authority up to \$5,000 provides BAR flexibility in determining fine amounts. Especially egregious offenses may warrant a fine of \$5,000 while less severe violations would be substantially less. These regulations will strengthen BAR's ability to enforce its laws and regulations, provide consumers additional protection, and ensure the implementation of a model emissions reduction program.

IMPACT ON JOBS/NEW BUSINESSES:

BAR has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS:

The proposed regulation will only affect businesses and persons that violate the Motor Vehicle Inspection Program.

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to BAR are:

Smog Check Stations: During May 1, 2010 to April 30, 2011 the average Smog Check station fine amount was \$1,047. This proposed regulation raises the minimum and maximum fine amounts for the majority of station violations. BAR projects that the average fine will increase to approximately \$2,253.

Smog Check Technicians: Prior to AB 2289, BAR had authority to cite Smog Check technicians but could not assess any monetary fines. AB 2289 provides BAR the authority to

assess administrative fines to technicians. BAR anticipates the average technician fine will be approximately \$1,596.

BAR anticipates the higher fines amount may act as a deterrent for improper Smog Check inspections and repairs. As a result, the number of citations issued is expected to decrease over time.

EFFECT ON HOUSING COSTS:

None.

EFFECT ON SMALL BUSINESS:

BAR has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

BAR must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to the affected private persons than the proposal described in this notice.

Set forth below are the alternatives that were considered and the reasons why each alternative was rejected:

Alternative 1: Do not implement the provisions of the H&S section 44050. This option is at odds with BAR's mandate to provide consumer protection and administration of a model motor vehicle emissions reduction program. This option does not create any additional costs or provide any benefits.

Alternative 2: Adopt a penalty schedule with a maximum fine authority of \$2,500. Any fine amount has the ability to discourage improper inspections and repairs; however, higher fines serve as a more effective deterrent.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

BAR has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the

proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Bureau of Automotive Repair at 10240 Systems Parkway, Sacramento, California, 95827.

AVAILABILITY OF THE RULEMAKING FILE AND THE FINAL STATEMENT OF REASONS

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the persons named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Web site listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

*Steven Hall
Bureau of Automotive Repair
10240 Systems Parkway
Sacramento, CA 95827
Telephone: (916) 255-2135
Fax No.: (916) 255-1369
E-mail: steven.hall@dca.ca.gov*

The backup contact person is:

*Brenda Dodson
Bureau of Automotive Repair
10240 Systems Parkway
Sacramento, CA 95827
Telephone: (916) 255-3147
Fax No.: (916) 255-3176
E-mail: brenda.dodson@dca.ca.gov*

WEB SITE ACCESS

Materials regarding this proposal can also be found on BAR's Web site at www.smogcheck.ca.gov.